IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 606 OF 2006

IN

CRIMINAL APPEAL NO. 556 OF 2006

Satish @ Motya Jagannath
Pasalkar & Anr. .. Applicant.

vs.

The State of Maharashtra. .. Respondents.

Mr. P.M. Pradhan for the Applicant.
Mr. S.R. Borulkar, P.P. for the State.

Coram: J.N. PATEL &,
R.S. MOHITE, JJ.
Date: 9th January, 2007.

P.C.

. This is an application for suspension of sentence by the applicants. It is the prosecution's case that on 22.9.2003 at about 8.00 to 8.30 a.m. the appellant accused along with absconding accused Appa Joshi came to their home at the relevant time when the deceased was taking bath. They assaulted the deceased with the Rambo knife. The incident is witnessed by the inmates of the house. The deceased was thereafter

shifted to Dr. Sonone Hospital and succumbed to his injuries after his statement came to be recorded at the hospital.

2. The learned counsel appearing for the appellant accused submitted that the principal accused Appa Joshi is absconding and the role attributed to the appellants is such that it does not make out a case under Section 34 of IPC. On the other hand, they have been falsely implicated and, therefore, their case can be considered for suspension of sentence and they have no criminal antecedent to their dis-credit.

3. The learned APP strongly objects to the suspension of the sentence on the ground that the prosecution has established its case. There is no reason to disbelieve the family members who are the natural witnesses to the assault and in the dying declaration also the victim has clearly impleaded all the persons who have been convicted by the trial Court.

4. For the purpose of assessing whether in the facts and circumstances the appellants are entitled to be released on bail by suspending part of their substantive sentence, we find that there is overwhelming evidence to show the complicity of the appellants-accused and, therefore, this is not a fit case where sentence can be suspended. The application is rejected.

5. The learned counsel for the appellants submitted that hearing of the appeal be expedited but he has not given any exceptional reason as to why preference should be given for taking up the hearing of appeals of these appellants-accused in preference to the persons who are languishing in jail since more than five years. As such, the oral prayer for expediting the hearing of the appeal also stands rejected.

(J.N. Patel, J.)

(R.S. Mohite, J.)